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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 MARIO PUENTE,
15 Defendant.
16

CASE NO.: 15-cr-00449-RSH-2

Hon. Robert S. Huie
Date: February 24, 2023
Time: 2:00p.m.

**MR. MARIO PUENTE'S
SENTENCING MEMORANDUM**

17 Mario Puente, by and through his counsel of record, Mayra Lopez and
18 Federal Defenders of San Diego, Inc. (hereinafter "Federal Defenders"), hereby
19 files the following sentencing memorandum. Mr. Puente respectfully requests that
20 this Court impose a sentence of time-served (72 days) with no supervised release
21 to follow in his case.

22 **I. A Sentence of Time-Served is Appropriate.**

23 A sentence of time-served with no supervised release is consistent with the
24 factors this Court must consider under 18 U.S.C. § 3583(e),¹ and it is the most
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26 ¹ Pursuant to § 3583(e), the Court may consider the history and characteristics of the defendant; the
27 need for the sentence imposed to afford adequate deterrence, protect the public, and provide the
28 defendant with needed education or vocational training, medical care, or other correctional treatment
in the most effective manner; the kinds of sentences available; the sentencing range under the
guidelines; any pertinent policy statement; the need to avoid unwarranted sentencing disparity; and
the need to provide for restitution. *See* 18 U.S.C. § 3583(e) (citing 18 U.S.C. § 3552(a)(1), (a)(2)(B),
(a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)). Punishment is not an appropriate factor and
cannot be considered by the Court.

1 appropriate sanction given the distressing events that occurred during Mr. Puente's
2 February 13, 2023, supervised release revocation hearing. Allowing Mr. Puente to
3 return to his family as soon as possible and begin healing from these events will
4 best remedy his breach of the Court's trust, as well as the Court's breach of trust.

5 **A. February 13, 2023 Final Revocation Hearing.**

6 On February 13, 2023, Mr. Puente admitted to violating the terms of his
7 supervised release. Although U.S. Probation originally recommended six months'
8 custody and 2 years of supervised release, at the hearing, the parties jointly
9 recommended 10 months' custody with no supervised release to follow. The
10 recommendation for no further supervision was based on Mr. Puente's desire to
11 leave San Diego, separate himself from negative peers, and start fresh. It was further
12 based on the fact that Mr. Puente has successfully completed two prior residential
13 drug treatment programs and knows how to access services in the community. As
14 indicated in the Petition, Mr. Puente entered New Connections, a residential drug
15 treatment program on May 31, 2022, *following* four of the five allegations in the
16 petition.² Mr. Puente successfully completed the program. The remaining violation
17 occurred after Mr. Puente shattered his ankle and was prescribed opiates for pain.

18 During this hearing, Mr. Puente's 13-year-old daughter was seated in the
19 gallery. As part of Mr. Puente's allocution, he expressed a desire to leave San Diego
20 because "everywhere and anywhere I turn, I know somebody."³ He indicated that
21 "[t]he only way I can – I feel like I can do anything is leaving, leaving what I
22 know..."⁴ He also expressed concern that his daughter was hanging out with the
23 wrong people, who might "lead her into the same path I went down." He expressed
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26 ² See ECF Doc. No 105 at pg. 3.

27 ³ See U.S. v. Puente, 15-cr-449-BEN, ECF Doc. No. 116 (Transcript of Revocation Proceedings held
28 on 2/13/23), at pgs. 11.

⁴ *Id.*

1 his belief that “the only thing [he] could do for her is try to get her out, try to get
2 her out.”⁵

3 Several minutes later, Judge Benitez asked a U.S. Marshal, “You got cuffs?”⁶
4 The Marshal confirmed he did. Judge Benitez then ordered the 13-year-old girl to
5 leave the spectator area, approach the front of the courtroom, and stand next to her
6 father’s lawyer. He told the Marshal to “[p]ut cuffs on her.” The Marshal did so,
7 cuffing the girl’s hands behind her back. As he did so, she was crying. Judge
8 Benitez then instructed the Marshal to “put[] her over there in the jury box for me
9 for just a minute.” The Marshal complied, placing the girl in the jury box in
10 handcuffs. She continued to cry.

11 After a long pause, Judge Benitez released the girl. But he did not allow her
12 to immediately return to her seat. Instead he told her, “don’t go away. Look at me.”⁷
13 He asked her how she liked “sitting up there” and “the way those cuffs felt on you.”⁸
14 Still in tears, she responded that she “didn’t like it.” He told her she was “an awfully
15 cute young lady” but that if she didn’t stay away from drugs, she would “wind up
16 in cuffs” and be “right back there where I put you a minute ago.”⁹

17 **B. The Harm Caused to Mr. Puente’s Daughter.**

18 Judge Benitez’s actions in this case were psychologically damaging and
19 harmful. According to testimony from the Government Accountability Office
20 (GAO), children can be “severely traumatized” by the use of handcuffs even when
21 “no physical injury is sustained.”¹⁰ Psychologists have found that shackling is
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23 ⁵ See U.S. v. Puente, 15-cr-449-BEN, ECF Doc. No. 116 (Transcript of Revocation Proceedings held
24 on 2/13/23), at pg. 12.

25 ⁶ *Id.* at 13.

26 ⁷ *Id.*

27 ⁸ *Id.*

28 ⁹ *Id.* at 14.

¹⁰ “Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers,” Testimony of Gregory D. Kutz before the Committee on Education and Labor, House of Representatives, May 19, 2009, *available at*: <https://www.gao.gov/assets/gao-09-719t.pdf>.

1 “humiliating for young people” who are “more vulnerable to lasting harm from
2 feeling humiliation and shame than adults.”¹¹ While a child is “in the midst of their
3 identity and moral development, demeaning treatment by adults may solidify
4 adolescents’ alienation” and “send mixed messages about the purpose of the justice
5 system.”¹² The use of handcuffs is also “a stigmatizing experience for young
6 people” that “can cause severe stress reactions.”¹³ Furthermore, restraining children
7 can “mirror past trauma experience, particularly the experience of physical and
8 emotional abuse” and involve “a sense of loss of control, powerlessness, betrayal,
9 fear, humiliation and pain,” which can “remain with these youths for a lifetime.”¹⁴
10 Thus, “shackling poses physical and psychological risk to young people.”¹⁵

11 Having a parent face criminal charges and potential incarceration is—
12 without more—highly traumatic for children. As child psychologists have
13 explained, children are “naturally egocentric” and assume they are “responsible”
14 for all that happens around them, including negative events.¹⁶ Indeed, children of
15 defendants “often blame themselves for their parent’s incarceration.”¹⁷ Thus, a
16 child who becomes enmeshed in their parent’s criminal case is even more likely to
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19 ¹¹ Affidavit of Dr. Marty Beyer, clinical psychologist, at 2, *available at*:
20 [http://defendyouthrights.org/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-](http://defendyouthrights.org/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-Final.pdf)
21 [Final.pdf](http://defendyouthrights.org/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-Final.pdf).

22 ¹² *Id.* at 4.

23 ¹³ Affidavit of Dr. Julian Ford, clinical psychologist, at 2, *available at*:
24 <http://defendyouthrights.org/wp-content/uploads/2014/09/Ford-Affidavit-Final-Dec-2014.pdf>.

25 ¹⁴ Affidavit of Dr. Robert Bidwell, board-certified pediatrician, at 3, *available at*:
26 <http://defendyouthrights.org/wp-content/uploads/2014/09/Bidwell-Affidavit-w-CV-2-18-15.pdf>.

27 ¹⁵ Affidavit of Dr. John F. Chapman, clinical child psychologist, at 2, *available at*:
28 [http://defendyouthrights.org/wp-content/uploads/2014/09/Chapman-Affidavit-Final-w-CV-](http://defendyouthrights.org/wp-content/uploads/2014/09/Chapman-Affidavit-Final-w-CV-Notarized-2-23-15.pdf)
[Notarized-2-23-15.pdf](http://defendyouthrights.org/wp-content/uploads/2014/09/Chapman-Affidavit-Final-w-CV-Notarized-2-23-15.pdf).

¹⁶ “For Children, the Default is ‘My Fault’ When Something Happens,” Diane Wagenhals, Institute
for Professional Education and Development, Lakeside Educational Network, *available at*:
<https://lakesidelink.com/blog/for-children-the-default-is-my-fault-when-something-happens/>.

¹⁷ “When a Child’s Parent Is Incarcerated,” Tanja Rothrauff, University of Missouri, *available at*:
<https://extension.missouri.edu/publications/gh6202>.

1 feel that they have contributed to their parent's incarceration. Judge Benitez's
2 actions caused psychological damage and harm to Mr. Puente's daughter.

3 **C. Neither a Further Custodial Sentence Nor Supervised Release is**
4 **Necessary to Deter Mr. Puente.**

5 The pain and powerlessness Mr. Puente felt at being unable to protect his
6 daughter from this senseless act were palpable to almost everyone in that
7 courtroom. Mr. Puente blames himself for the hurt and pain he caused his daughter,
8 who "he states frequently as someone who means the world to him."¹⁸ February
9 13th was the first time his daughter had attended any of his hearings, and he swears
10 that it will be the last. Mr. Puente plans to do everything he can to avoid being in
11 another courtroom.

12 Moreover, Mr. Puente has a plan. He intends to move out of California with
13 his family and start anew. His plan shows insight into the criminogenic factors that
14 have caused him to relapse and recidivate in the past. He understands that the
15 biggest risk factor for him is the impact of negative peers, people he grew up with
16 in San Diego that pop up "everywhere and anywhere [he] turn[s]."¹⁹ His
17 understanding of what is necessary to give him the best chance of a positive reentry
18 outcome is consistent with social science research.²⁰ Further supervision will
19 impede, rather than assist, Mr. Puente's reentry plan.

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24 ¹⁸ ECF Doc. No. 105.

25 ¹⁹ ECF Doc. No. 116 at pg. 11.

26 ²⁰ See e.g., Mowen TJ, Boman JH 4th. *The Duality of the Peer Effect: The Interplay Between Peer*
27 *Support and Peer Criminality on Offending and Substance Use During Reentry*. Crime Delinq. 2018
28 Jul;64(8):1094-1116. doi: 10.1177/0011128717740529. Epub 2017 Nov 8. PMID: 30976127;
PMCID: PMC6453146 (finding that "peer criminality relates to significantly higher odds of substance
use and criminal offending, whereas peer support relates to significantly lower odds of substance use
and offending").

A time-served sentence with no supervised release will allow Mr. Puente to put the distressing events that occurred during his first revocation hearing behind him and start fresh in a new city and state. Moreover, a time-served sentence with no supervised release will ensure finality for everyone. *See United States v. King*, 891 F.3d 868 (9th Cir. 2018) (when an individual is released from custody after a revocation with no further supervision, any appeal is moot and will be dismissed). Mr. Puente has been adequately sanctioned for his breach of the Court's trust. Allowing Mr. Puente to return to his family as soon as possible and begin healing from these events will best remedy the Court's breach of trust. Importantly, this will also help him and his family regain trust in the justice system.

Dated: February 23, 2023

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